



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 15, 1998

Ms. Tina Morales
Senior Records Analyst
Office of the District Attorney
County of Travis
P.O. Box 1748
Austin, Texas 78767

OR98-2186

Dear Ms. Morales:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 118247.

The Travis County District Attorney's Office (the "district attorney") received a request for information relating to two specific cases. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the submitted representative sample of documents.¹

Initially, we note that you seek to withhold certain court documents. Documents filed with a court are generally considered public. *Cf. Star Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992). Therefore, the district attorney must release court-filed documents to the requestor.

Section 552.103(a) of the Government Code reads as follows:

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(a) Information is excepted from [required public disclosure] if it is information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

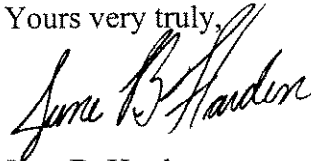
To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103 applies is a two-prong showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). We also note that section 552.103(b) provides that "[f]or purposes of this section, the state or a political subdivision is considered to be a party to litigation of a criminal nature until the applicable statute of limitations has expired or until the defendant has exhausted all appellate and postconviction remedies in state and federal court." You indicate that the "two cases are presently on appeal in the State Court of Appeals. The appellate cases have been assigned Cause Nos. 0397-00405-CR and 0397-00406-CR." After reviewing the submitted material, we find that litigation is pending. We also conclude that the documents you have submitted relate to the litigation, and may be withheld.

In so ruling, we assume that none of the information in the records at issue has previously been made available to the criminal defendant or his prior attorneys during the course of the criminal prosecution. Generally, once information has been obtained by all parties to the litigation, either through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). To the extent the defendant or his attorneys have seen or had access to these records, there would be no justification for now withholding such information from the requestor pursuant to section 552.103(a).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous

determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "June B. Harden". The signature is fluid and cursive, with the first name "June" and last name "Harden" being clearly legible.

June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref.: ID# 118247

Enclosures: Submitted documents

cc: Ms. Jan Dunlap
8508 Selway
Austin, Texas 78736
(w/o enclosures)